CT. 92.—New York Code Civ. Proc., sec. 1780, provides that suits between foreign corporations can be maintained only when the cause of action arises within the State. This statute is interpreted by the New York courts as precluding an action on the judgment of a sister State by one foreign corporation against another. *Held,* not to violate Art. 4, sec. 1, U. S. Const., guaranteeing full faith and credit to such judgments.

The constitutional provision establishes a rule of evidence rather than of jurisdiction. *Wisconsin v. Insurance Co.,* 127 U. S. 265. While, generally, a judgment is entitled to full faith and credit in the courts of a foreign jurisdiction, *Insurance Co. v. Harris,* 97 U. S. 331, yet the court of the former may investigate the jurisdiction of the court where decision was rendered, *Thompson v. Whitman,* 18 Wall. 457. The Constitution does not require a State to give jurisdiction against its will, *Missouri v. Lewis,* 101 U. S. 22; but when jurisdiction is acquired, the Constitution determines the effect of the judgment.

CONTRACTS—DISCHARGE—ACCORD AND SATISFACTION—TENDER UPON CONDITION.—NEELY V. THOMPSON, 75 PAC. 117 (KAN.).—Defendant sent plaintiff statement of account, with $7.90 "in full satisfaction of balance due." Plaintiff cashed the check, which contained the words, "Balance in full for fees," but at the same time wrote to defendant denying that his claims were so satisfied. *Held,* that the creditor was bound to understand that, if he accepted the check, he took it subject to the condition that it should be in full settlement of the demand. Mason, J., *dissenting.*

Where an offer of an accord is made upon the condition that it be taken in full of all demands, the party to whom it is made has no alternative but to refuse it, or accept it upon such condition; and if he takes it, no protest or declaration made by him at the time can affect the case. *Bull v. Bull,* 43 Conn. 455. He cannot accept the benefit and reject the condition. He who tenders the money owns it, and has the right to say on what condition it shall be received. *Nassoiy v. Tomlinson,* 148 N. Y. 326; *Fuller v. Kemp,* 138 N. Y. 231. "Always the manner of the tender and of the payment shall be directed by him that maketh the tender or payment, and not by him that accepteth it." *Pinnel's Case,* 5 Co. 117. The dissenting opinion seems to overlook the fact that the ownership of the money does not change till the condition has been accepted; and, while admitting the weight of authority to be otherwise, holds that where the money paid is for a portion of the debt admittedly due, no consideration exists for the release of the portion in dispute.

EVIDENCE—CASH REGISTER RECORDS—MEMORANDA AS INDEPENDENT EVIDENCE.—CULLINAN V. MONCRIEF, 85 N. Y. SUPP. 745.—Cash register records, introduced to sustain testimony of a party to a transaction, *held,* inadmissible.

At first sight it would seem that the records of a cash register, preserved by way of accounts, are so closely analagous to the records in shop-books as to come under the rule which admits the latter as evidence. *McKelvey on Evidence,* sec. 163. Because such records contain the element of "daily routine of business," which the decisions seem to deem essential to the reliability of such evidence. *Prince v. Smith,* 4 Mass. 455. But the rule is confined to shop-books with great strictness. *Richardson v. Emery,* 23 N. H. 220; *Kotwitz v. Wright,* 37 Tex. 82. And it is evident that cash register records could not be received, on any other grounds, as independent evidence, or even in an

auxiliary way unless the witness could not otherwise remember the transaction. *People v. McLoughlin,* 150 N. Y. 365.

EVIDENCE—IMPEACHING WITNESS—PREVIOUS STATEMENTS—REFRESHING MEMORY.—PEOPLE V. CREEKS, 75 PAC. 101 (CAL.).—In a murder trial, the State called as a witness the mother of the accused. Her testimony at the inquest had been material toward showing the prisoner's guilt. To the surprise of the State, she now failed to repeat that testimony, alleging that doubts of its truth had arisen in her mind. *Held,* that as she had not made statements to the damage of the State at the trial, but had merely failed to aid in the proof, she could not be made to testify as to what her former evidence had been. Van Dyke, J., *dissenting.*

Such proceedings would be an attempt to substitute former for present testimony. *Comm. v. Phelps,* 11 Gray 73. Of themselves, former inconsistent statements of a witness are irrelevant to the question of guilty or not guilty, though they tend to impeach his credit. A witness cannot be questioned in regard to such statements, by the party who called him, though he swore to them before the grand jury. *People v. Safford,* 5 Denio 112,—a case parallel to the present case, save that no bias of witness appeared. A witness, —whichever party calls him—cannot be impeached unless he has given testimony against the impeaching party. *People v. Mitchell,* 94 Cal. 550. The right of counsel to refresh the memory of a witness in no way depends on the surprise which his testimony may have created, and a witness who has omitted details should not be asked whether he had not testified to the omitted details before the committing magistrate or grand jury. *Putnam v. U. S.,* 162 U. S. 697, 705.

DEED OPERATING AS A MORTGAGE—OPTION TO PURCHASE.—REICH V. DYER ET AL., 86 N. Y. SUPP. 544.—Plaintiff being indebted to the defendant, executed a deed of property giving the latter an option to purchase at a price fixed in the deed within a year. *Held,* that such a deed was in fact a mortgage. Laughlin, J., *dissenting.*

The dissenting opinion is the more reasonable one. From the facts, which are not clear, it seems that the parties intended an absolute deed to be made to defendant's testatrix, on condition that within a year she accept the property at an agreed price. Upon failure to purchase, defendant's testatrix was to become mortgagee. They could not have intended the transaction to operate as a mortgage, because if it operated as such, it could never become an absolute conveyance. "Once a mortgage always a mortgage," 1 *Jones on Mort.,* par. 7; *Bisp. on Eq.,* sec. 153. Every conveyance of land accompanied by a conditional agreement is not necessarily a mortgage. *Baker v. Thrasher,* 4 Denio 493; *Macaulay v. Porter,* 71 N. Y. 173. The intention of the parties should govern. *Hughes v. Shaff,* 19 Ia. 335; *Foley v. Kirk,* 33 N. J. Eq. 170. The defendant's testatrix impliedly accepted the option to purchase at the end of the year, on the ground of estoppel by conduct. *Wash. on Real Prop.,* sec. 1914; *Bigelow on Estoppel,* 454.

HOMICIDE—SELF-DEFENSE—NECESSITY OF RETREAT.—STATE V. CASTLE, 46 S. E. 1 (N. C.).—Where it appeared that the accused, who was the foreman of a lumber camp, shot two of the hands during a difficulty commenced by